



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. HMA 21024-25

AGENCY DKT. NO. N/A

N.S.,

Petitioner,

v.

**MONMOUTH COUNTY DIVISION
OF SOCIAL SERVICES,**

Respondent.

K.B., Executor of the Estate of **N.S.**, for petitioner, pursuant to N.J.A.C 1:10B-5.1

Patrick J. Boyle, Esq., for respondent

Record Closed: May 21, 2026

Decided: June 4, 2026

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

STATEMENT OF THE CASE

Petitioner, N.S.¹, appealed the decision of respondent, Monmouth County Division of Social Services (Agency), denying eligibility for Managed Long-Term Services and Supports (MLTSS) Medicaid benefits. The Agency determined that petitioner's one-third

¹ N.S. died on September 13, 2025. She is represented in this proceeding by her daughter and the Executor of her Estate, K.B.

interest in her deceased husband's estate put her over the eligibility resource limit of \$2,000. N.J.A.C. 10:71-4.5(c).

On appeal, the petitioner contends that her share of the funds from the Estate of J.S. was not accessible to her. Moreover, the Agency's failure to process the application for seven months without explanation was unreasonable and prejudicial. Under the circumstances presented here, the Agency's failure to process the application in accordance with the time limits imposed by N.J.A.C. 10:71-2.3(a) harmed the petitioner. If the application had been timely processed, the inheritance would have been an excludable resource under N.J.A.C. 10:71-4.4(b)(6), prior to N.S.'s death on September 13, 2025. Therefore, the Agency's failure to timely process this application resulted in an improper denial of Medicaid benefits and cannot be excused.

PROCEDURAL HISTORY

The Division of Medical Assistance and Health Services (DMAHS) transmitted the matter to the Office of Administrative Law (OAL) where it was filed on December 10, 2025, for determination as a contested case. N.J.S.A. 52:14B-1 to -15.

The original hearing date of January 23, 2026, was adjourned by petitioner with consent of the Agency. I scheduled a telephone hearing on January 30, 2026, to set a hearing date. The parties agreed to appear via Zoom platform for a hearing on February 26, 2026. At the request of the parties, the hearing was adjourned until April 15, 2026, for confirmation of K.B.'s status as executor of petitioner's estate. The matter was further delayed due to a scheduling conflict with respondent's attorney and an issue with representation of the executor by a non-attorney representative.

The case was heard by Zoom platform on May 6, 2026. After receipt of closing summation briefs, the record closed on May 21, 2026.

STATEMENT OF FACTS

After listening to testimony and reviewing the documentary evidence I **FIND** the following as **FACT**:

On February 12, 2025, N.S., by her Designated Authorized Representative (DAR), Chava Merkin, filed a Medicaid application. (R-1 & 2.) The application was not assigned to a case worker until September 15, 2025, who issued the first Request for Information (RFI), with a due date of September 29, 2025. (R-5.) As listed by the Agency in its Chronological List of Events, the Agency knew that N.S.'s spouse J.S. passed away on July 17, 2024. The Agency had a copy of J.S.'s will, which specified that N.S. would receive her elective share of one-third of the augmented estate, with the remainder of the estate to be divided between their daughter K.B. and the [S]pecial Needs Trust for their disabled daughter, K.S. Certain verifications were required, including the sale of the home and bank statements.

On September 26, 2025, the Agency learned that N.S. died on September 13, 2025. On September 26, 2025, the case worker and the DAR reviewed all the verifications needed. The DAR informed the case worker that K.B. had applied to be her mother's executor, but the process was still pending. The DAR requested additional time, which was granted.

As of October 1, 2025, the Agency issued the second RFI with a due date of October 15, 2025. (R-6.)

On October 22, 2025, after reviewing the information provided, including an accounting of N.S.'s one-third share of the Estate of J.S., the Agency determined that the client was over the resource limit due to the large estate settlement of \$28,396.90. By letter, dated October 22, 2025, the Agency denied the application because "total countable resources exceed Medicaid resource limit of \$2,000.00 for the MLTSS program." (R-4.) As stated on the denial letter, the Agency wrote that the "[c]lient was entitled to \$28,396.60 or 1/3 of her spouse's estate, making her over the \$2,000 resource limit." Ibid.

LEGAL ANALYSIS AND CONCLUSIONS

"The Medicaid program, established by Title XIX of the Social Security Act, is a joint federal-state program designed to provide medical care for indigent, disabled, and elderly persons." United Hosps. Med. Ctr. v. State, 349 N.J. Super. 1, 4, 793 A.2d 1 (App. Div. 2002) (citing 42 U.S.C. § 1396). Medicaid provides "medical assistance to the poor at the expense of the public." Estate of DeMartino v. Div. of Med. Assistance & Health Servs., 373 N.J. Super. 210, 217 (App. Div. 2004). New Jersey participates in Medicaid through the New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 to -19.5. Consistent with the recognized policy that Medicaid is designed for needy individuals, the New Jersey Legislature has directed that Medicaid benefits "shall be last resource benefits notwithstanding any provisions contained in contracts, wills, agreements or other instruments." N.J.S.A. 30:4D-2. Pursuant to the Medicaid statute, the Division of Medical Assistance and Health Services (DMAHS) has promulgated regulations implementing New Jersey's Medicaid Only program. N.J.A.C. 10:71-1.1 to 9.5. "Such administration includes the promulgation and adoption of regulations governing qualification for Medicaid benefits, as well as serving as gatekeeper to prevent individuals from using Medicaid to avoid payment of their fair share for long-term care." W.T. v. Div. of Med. Assistance & Health Servs., 391 N.J. Super. 25, 36-37, 916 A.2d 1066 (App. Div. 2007). County welfare agencies are responsible for determining Medicaid eligibility. N.J.S.A. 30:4D-7a.

Generally, the Agency is required to process an application for MLTSS in forty-five days. N.J.A.C. 10:71-2.3. When the complete processing of an application is delayed beyond forty-five days for the aged or ninety days for the blind or disabled, written notification shall be sent to the applicant on or before the expiration of such period, setting forth the specific reasons for the delay. N.J.A.C. 10:71-2.3. Here, Meridith Winick, Human Services Specialist 3, testified that Monmouth County uses a case bank system, and applications are reviewed in the order that they are assigned. The Agency argued that there is no harm to the applicant because the original filing date is honored when eligibility is determined. The Agency had no justifiable excuse for its failure to comply with its obligations under N.J.A.C. 10:71-2.3.

To qualify for Medicaid in New Jersey, an applicant must provide documentation verifying her financial eligibility and such verifications must show that the applicant is financially eligible for the program.

DMAHS provides institutional level Medicaid benefits to individuals residing in nursing homes pursuant to the Medicaid Only program. N.J.A.C. 10:71-1.1 to 9.5. Among other eligibility requirements, an applicant must meet both income and resource standards. N.J.A.C. 10:71-3.15. Here, the Agency determined that petitioner exceeded the resource limit due to her inheritance. For financial eligibility, an individual's resources may not exceed \$2,000 in value. N.J.A.C. 10:71-4.5(c). An applicant's "[r]esource eligibility is determined as of the first moment of the first day of each month." N.J.A.C. 10:71-4.1(e). A "resource" is "defined as any real or personal property which is owned by the applicant . . . and which could be converted to cash to be used for his or her support and maintenance." N.J.A.C. 10:71-4.1(b). Moreover, "[b]oth liquid and nonliquid resources shall be considered in the determination of eligibility, unless such resources are specifically excluded under the provisions of N.J.A.C. 10:71-4.4(b)." Ibid.

A resource must also be "available" for purposes of an eligibility determination. N.J.A.C. 10:71-4.1(c). A resource is available if "[t]he person has the right, authority or power to liquidate real or personal property or his or her share of it[.]" Ibid. When evaluating an applicant's available resources, "[t]he CWA shall verify the equity value of resources through appropriate and credible sources." N.J.A.C. 10:71-4.1(d).

Under N.J.A.C. 10:71-4.4(b)(6), excludable resources include:

The value of resources which are not accessible to an individual through no fault of his or her own.

- i. Such resources include, but are not limited to, irrevocable trust funds, **property in probate**, and real property which cannot be sold because of the refusal of a co-owner to liquidate.
- ii. Inaccessible resources shall be reevaluated (regarding their accessibility) at every redetermination.

[(emphasis added).]

The record reflects that once the application was assigned on September 15, 2025, the Agency case worker and the DAR worked collaboratively within their roles to satisfy the Agency's requests for information to determine eligibility.

At the time of application and for the next eight months, the money from petitioner's inheritance from her deceased husband's estate was unavailable to her. If her application had been timely processed as required, the probate property should have been an excludable resource under N.J.A.C. 10:71-4.4(b)(6). In closing summation, the Agency remarked that the delay benefited the petitioner because her inheritance was not determined until October 7, 2025. This is simply false. Property in probate is an excludable resource not a justification for delay.

The Agency also argued that the property in probate was available to the petitioner because the executor made an interim distribution from her share to pay J.B. Elder Care. Although K.B. was her mother's power of attorney, she also served as the executor of her father's estate. As the executor of J.S.'s estate, K.B. had a fiduciary obligation to act in the best interest of the estate. In her role as executor, only K.B., not her mother, had the sole power to distribute assets still owned by the estate. Estate assets are not an available resource to the beneficiary until the administration process is complete, which explains why property in probate was deemed by regulation to be an excludable resource.

Under the circumstances presented herein, I **CONCLUDE** that the Agency's failure to comply with its responsibility under N.J.A.C. 10:71-2.3, harmed the petitioner who only became over-resourced because of the Agency's delay. Petitioner's death on September 13, 2025, was an extenuating circumstance that further complicated this matter. In the interest of fairness and square dealing, I **CONCLUDE** that the case should be returned to the Agency to process the application within the time allowed by N.J.A.C. 10:71-2.3, and determine eligibility under the application filed on February 12, 2025, in accordance with N.J.A.C. 10:71-4.4(b)(6), which excludes property in probate as a countable resource. As with any application, the DAR should be given the opportunity to properly fund the QIT and make appropriate adjustments within reasonable processing times.

The Agency attempted to justify its denial of Medicaid benefits by arguing that the petitioner had a “full two weeks” to spend down her inheritance. As property in probate is an excludable resource, the petitioner was not required to spend down this resource before being approved for Medicaid. However, this is not to suggest that if N.S. is deemed eligible for Medicaid benefits, her estate is entitled to keep the inheritance money. Federal Medicaid law requires states “to enact certain ‘estate’ recovery provisions as part of their medical assistance plans.” Estate of De Martino, 373 N.J. Super. at 217. DMAHS may file a lien or seek recovery from the estate of a deceased recipient for assistance correctly paid or to be paid for all services received. N.J.S.A. 30:4D-7.2 and N.J.A.C. 10:49-14.1. In addition, under N.J.A.C. 10:71-4.4(b)(6), inaccessible resources must be reevaluated for their accessibility. Accordingly, the parties should work together to properly apply the funds when processing this application for eligibility.

ORDER

It is hereby **ORDERED** that the decision of the Monmouth County Division of Social Services denying Medicaid eligibility is **REVERSED**. Petitioner's appeal is **GRANTED**. I further **ORDER** that the case shall be returned to the Agency to process the application to determine petitioner's eligibility as required under N.J.A.C. 10:71-2.3.

I **FILE** this initial decision with the **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**. This recommended decision is deemed adopted as the final agency decision under 42 U.S.C. § 1396a(e)(14)(A) and N.J.S.A. 52:14B-10(f). The **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES** cannot reject or modify this decision.

If you disagree with this decision, you have the right to seek judicial review under New Jersey Court Rule 2:2-3 by the Appellate Division, Superior Court of New Jersey, Richard J. Hughes Complex, PO Box 006, Trenton, New Jersey 08625. A request for judicial review must be made within 45 days from the date you receive this decision. If you have any questions about an appeal to the Appellate Division, you may call (609) 815-2950.



June 4, 2026

DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

Date Mailed to Parties:

KMC/tat

APPENDIX

WITNESSES

For petitioner

Chava Merkin, DAR
K.B., Executor

For respondent

Meridith Winick, Human Services Specialist 3

EXHIBITS

For petitioner

P-1 Petitioner's packet

For respondent

R-1 Application
R-2 DAR form
R-3 Regulations
R-4 Denial letter, dated October 22, 2025
R-5 First RFI, dated September 15, 2025
R-6 Second RFI, dated October 1, 2025
R-7 Estate distribution calculation